

IN THE MATTER OF:)	Case No.: 3955
)	
STEPHEN BRENT McKAY, D.O.)	AMENDMENT TO
Holder of License No. 005144)	PROBATIONARY ORDER
(previously held license no. 3941))	
)	

In the application to hold a license and practice
of osteopathic medicine in the State of Arizona,

AMENDED ORDER

Pursuant to A.R.S. §§ 32-1855 (C) and 41-1064 (C), License No. 005144 held STEPHEN BRENT McKAY, D.O., ("Respondent") remains on **PROBATION** with all terms of the original Order, except for the following modification to the term contained in paragraph 1 of the original Order:

- ISSUED THIS 15 DAY OF JANUARY, 2009.

By: Elaine LeTarte
Elaine LeTarte, Executive Director

1 Original "Amendment to Probationary Order"

2 filed this 15th day of January, 2009 with the:

3 Arizona Board of Osteopathic Examiners in Medicine and Surgery
4 9535 East Doubletree Ranch Road
5 Scottsdale AZ 85258-5539

6 Copy of the foregoing "Amendment to Probationary Order"
7 sent via certified, return receipt requested this

8 22nd day of January, 2009 to:

9 Stephen Brent McKay, D.O.
10 4641 E Chapanosa Way
11 Cave Creek AZ 85331

12 Copies of the foregoing "Amendment to Probationary Order"
13 sent via interagency mail this 22nd day of January, 2009 to:

14 Blair Driggs and Marc Harris, AAsG
15 Office of the Attorney General CIV/LES
16 1275 West Washington
17 Phoenix AZ 85007

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Kathy Towles

1 **BEFORE THE ARIZONA BOARD OF OSTEOPATHIC EXAMINERS**
2 **IN MEDICINE AND SURGERY**

3 IN THE MATTER OF:)

Case No.: 3955

4 **STEPHEN MCKAY, D.O.,**)
5 Holder of License No. 3941)

**CONSENT AGREEMENT TO FINDINGS
OF FACT, CONCLUSIONS OF LAW AND
ORDER**

6 For the practice of osteopathic medicine in the)
7 State of Arizona)
8)
9)

10 By mutual agreement and understanding, the Arizona Board of Osteopathic Examiners
11 (hereafter "Board") and Stephen McKay, D.O. (hereinafter "Respondent"), the parties, hereto
12 agree to the following disposition to this matter.

13 1. Respondent acknowledges that he has read this Consent Agreement and Order;
14 and, Respondent is aware of and understands the content of these documents.

15 2. Respondent understands that by entering into this Consent Agreement and Order,
16 he voluntarily relinquishes any rights to a hearing on the matters alleged as grounds for Board
17 action or to seek judicial review of the Consent Agreement and Order in state or federal court.

18 3. Respondent understands that this Consent Agreement and Order will not become
19 effective unless approved by the Board and signed by its Executive Director.

20 4. Respondent further understands that this Consent Order and Order, once approved
21 and signed, shall constitute a public record which will be disseminated as a formal action of the
22 Board.

23 5. Respondent admits to the statement of facts and conclusions of law contained in
24 the Consent Agreement and Order.

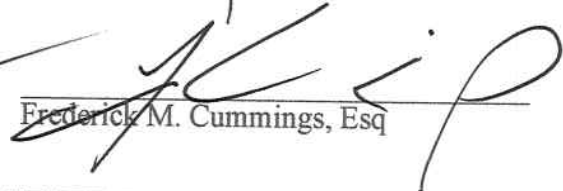
25 6. All admissions made by Respondent are solely for final disposition of this matter
and any subsequent administrative proceedings or litigation involving the Board, Respondent and

1 the State of Arizona; and, therefore, said admissions by Respondent are not intended for any
2 other purpose or administrative regulatory proceeding or litigation in another state or federal
3 court.

4 7. Respondent acknowledges and agrees that upon signing and returning this
5 document (or a copy thereof) to the Board's Executive Director, he may not later revoke or
6 amend any part of the Consent Agreement and Order, without first obtaining Board approval.

7 REVIEWED AND ACCEPTED THIS 28 DAY OF September, 2008.

8 
9 Stephen McKay, D.O., Respondent

10 
Frederick M. Cummings, Esq

11 JURISDICTIONAL STATEMENTS

12 1. The Board is empowered, pursuant to A.R.S. §§ 32-1800 et seq. to regulate the
13 licensing and practice of osteopathic medicine in Arizona.

14 2. The Board has the authority to informally dispose by stipulation, agreed
15 settlement, consent order or default pursuant to A.R.S. § 41-1092.05 (F)(5).

16 3. Respondent holds license No. 3941 to practice osteopathic medicine in Arizona.

17 FINDINGS OF FACT

18 1.. Information was brought to the attention of the Board on or about September 26,
19 2007 that the Respondent was the main subject of a criminal investigation by the Prescott Police
20 Department identified as D.R. Case#: 07-35251.

21 2. The allegations indicate that Respondent may have illegally diverted prescription
22 medications for personal use by forging another physician's prescription form and submitting it
23 to a CVS Pharmacy.

24 3. The allegations also indicate that Respondent may have been illegally prescribing
25 medication to others, including his wife, for personal use.

1 4. The Arizona Board of Osteopathic Examiners in Medicine and Surgery ("Board")
2 reviewed this matter at an emergency Board meeting on September 29, 2007. Having considered
3 the information in the matter and being fully advised, the Board entered an Interim Findings of
4 Fact, Interim Conclusions of Law and Order for Summary Suspension of License No. 3941,
5 pending formal hearing or other board action.

6 5. Respondent entered into a residential treatment program at Hazelden Springbrook
7 and was discharged with staff approval and recommended aftercare treatment.

8 6. Respondent entered into a plea agreement resulting in criminal felony charges
9 arising out of these events and placed on probation. If Respondent successfully completes the
10 terms of the probation, the charges would be reduced to misdemeanors.

11 CONCLUSIONS OF LAW

12 1. The conduct described in Findings of Fact 3 through 4 herein constitutes
13 unprofessional conduct as defined by the following A.R.S. § 32-1854 subsections:

- 14 (2) Committing a felony, whether or not involving moral turpitude,
 or a misdemeanor involving moral turpitude.
- 15 (5) Prescribing, dispensing or administering controlled substances
 or prescription only drugs for other than accepted therapeutic purposes.
- 16 (22) Using controlled substances or prescription-only drugs unless they
 are provided by a medical practitioner, as defined in section 32-1901,
 as part of a lawful course of treatment.
- 17 (23) Prescribing controlled substances to members of one's immediate
18 family unless there is no other physician available within fifty miles
 to treat a member of the family and an emergency exists.

19 ORDER

20 **NOW, THEREFORE, IT IS ORDERED AS FOLLOWS:**

21 Pursuant to A.R.S. § 32-1855 (E)(4), License No. 3941 held by Stephen McKay, D.O.,
22 ("Respondent") shall be **CENSURED** and placed on **PROBATION** for **FIVE (5) years** from
23 the date of this order with the following terms and conditions of probation as set forth herein:

24 1. Respondent shall not practice medicine until such time as he successfully
25 completes an in-patient evaluation and in-patient treatment program as recommended by a

1 treatment and care facility approved by the Executive Director. Respondent must adhere to any
2 and all recommendations of his evaluators upon release from the in-patient treatment program
3 and appear before the Board prior to practicing medicine in the State of Arizona. In addition,
4 Respondent shall not engage in the practice of medicine for more than twenty (20) hours per
5 week for three (3) months from the date of this order at which time Respondent shall come
6 before the Board to request a modification of this term. Respondent enrolled into and completed
7 a 120 day inpatient evaluation and treatment program at Hazelden Springbrook prior to finalizing
8 this consent agreement.

9 2. Respondent will develop/maintain a plan for treatment and monitoring which
10 shall include, but may not be limited to, individual and/or group counseling sessions, pain
11 management contracts, random body fluid testing, agreement for release of treatment records and
12 reports to the Board, prohibition of the use of alcohol and controlled substances unless the latter
13 is prescribed or coordinated by his treating physician, and regular meetings with the Board, and
14 submit this plan to the Board for its approval. It is noted that Respondent has been participating
15 in a treatment and monitoring program under the supervision of Michael Sucher, MD, since
16 April 2008, which has included group counseling and random testing prior to finalizing this
17 consent agreement.

18 3. From the date of this Order, Respondent shall obtain treatment by a therapist(s)
19 who is selected by Respondent and approved by the Board. Respondent shall comply with the
20 therapist recommendation for the frequency of therapy treatment sessions. Respondent shall
21 inform the Board by letter (mailed within ten days of the date of this Order) of the therapist's
22 name; and, Respondent shall undertake and fully cooperate with a program of treatment
23 established by the therapist. In the event Respondent changes therapists, he shall give the Board
24 written notice within ten (10) days of said action. Respondent shall not discontinue or reduce the
25

1 frequency of therapy sessions until he has submitted a written request to the Board and obtained
2 Board approval.

3 4. Respondent's therapist(s) shall receive a copy of this Order and Board staff shall
4 cooperate with and disclose all relevant information in the Board's files concerning Respondent.
5 The treating therapist shall be directed by Respondent to send to the Board a detailed written
6 progress report every month for the remainder of the probation; and Respondent shall waive any
7 confidentiality with the Board concerning his therapy in order that the Board may receive full
8 disclosure of information. The expense of the aforementioned therapy and the reports to the
9 Board by Respondent's therapist shall be the sole responsibility of the Respondent.

10 5. Respondent shall provide a copy of this Order and any subsequent Orders to all
11 facilities where Respondent is currently (or subsequently) employed as a physician and/or has (or
12 subsequently receives) privileges to engage in the practice of medicine. Respondent shall
13 provide a copy of this Order to all treating physicians, dentists and or health care professionals.
14 Respondent shall continue to make the aforementioned disclosure and provide copies of this
15 Consent Order until the expiration of this Order.

16 6. Respondent may have his license to practice as an osteopathic physician
17 restricted, suspended or revoked by the Board in the future if:

- 18 (a) The Board finds that Respondent does not have the requisite mental, physical and
19 emotional fitness to safely continue the practice of medicine; or,
- 20 (b) There are new grounds for finding unprofessional conduct concerning
21 Respondent; or,
- 22 (c) Fails to comply fully with the terms and conditions of this Order.

23 7. Respondent shall abstain completely from the consumption of alcoholic beverages
24 or any substance with alcohol (i.e., mouth wash, cough syrups); and, Respondent shall not
25 consume illicit drugs or take any controlled substances (i.e., prescription only drugs), unless his
treating physician prescribes such medication for him with the awareness that Respondent has a
substance abuse disorder. Respondent shall maintain a monthly log (for the duration of

1 probation) of all prescription only drugs taken by him and such log shall include the following
2 information:

- 3 (a) the name of the medication;
- 4 (b) name of prescribing physician;
- 5 (c) reason for the medication.

6 8. At the first of each month, Respondent shall report by letter to the Board whether
7 or not he is taking any prescription only medication and, if so, a copy of his log reflecting the
8 above information.

9 9. Respondent shall also, as part of his probation: (A) submit to and cooperate in
10 any independent medical or psychological evaluation that is ordered by the Board for
11 Respondent and conducted by the Board's designated physician and/or psychologist which shall
12 be paid for by Respondent; and (B) appear before the Board, upon receipt of a request by written
13 or telephonic notification from the Board's executive director which shall be given at least five
14 (5) days prior to the Board meeting; and, (C) submit to random biological fluid testing and
15 promptly provide (i.e., within sixty (60) minutes of notification) required biological fluids for
16 testing and said testing shall be done at the Respondent's expense.

17 10. In the event Respondent moves and ceases to practice medicine in Arizona, he
18 shall give written notice to the Board of his new residence address within twenty (20) days of
19 moving; and, the terms and duration of probation may be stayed by the Board until Respondent
20 returns to practice medicine in Arizona.

21 11. Respondent shall reimburse the Board for all expenses associated with the
22 continued monitoring of this matter.

23 12. Respondent shall continue to meet all licensing requirements such as continuing
24 medical education and renewal requirements including applicable fees pursuant to A.R.S. § 32-
25 1825.

1 13. The Board's Executive Director shall send correspondence to the appropriate state
2 and/or federal law enforcement agency disclosing information in the Board's possession which
3 may establish criminal misconduct by Respondent, i.e., illicit use of controlled substances.

4 14. Respondent's failure to comply with the requirements of this Order shall
5 constitute unprofessional conduct as defined at A.R.S. § 32-1854(26), as amended, and may be
6 considered as grounds for further disciplinary action (e.g., suspension or revocation of license) in
7 the event that Respondent fails to comply with any of the requirements of this Order.

8 ISSUED THIS 3rd DAY OF October, 2008.
9 STATE OF ARIZONA
10 BOARD OF OSTEOPATHIC EXAMINERS IN
MEDICINE AND SURGERY

11 By: Barbara Myers
12 Barbara Myers, Deputy Executive Director

13 Original "Consent Agreement"
filed this 3rd day of October, 2008 with the:

14 Arizona Board of Osteopathic Examiners
15 In Medicine and Surgery
9535 East Doubletree Ranch Road
16 Scottsdale AZ 85258-5539

17 Copy of the foregoing "Consent Agreement" sent via certified,
return receipt requested
18 this 3rd day of October, 2008 to:

19 Stephen McKay, D.O.
807 Country Club Drive
Prescott, AZ 86303

20 Frederick M. Cummings, Esq.
21 Jennings, Strouss & Salmon, PLC
201 East Washington Street, 11th Floor
22 Phoenix, AZ 85004-2385

23 Copies of the foregoing "Consent Agreement" sent via regular mail
this 3rd day of October, 2008 to:

24 Blair Driggs, AAG
25 Office of the Attorney General CIV/LES
1275 West Washington
Phoenix AZ 85007

Kathy Jones